

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605957

JORGE VERA	CLAIMANT
BUILT WELL CONSTRUCTION	RESPONDENT
CONTINENTAL CASUALTY COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 6, 2008

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 26, 2007, in Springdale, Arkansas.

A pre-hearing order was entered in this case on October 9, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1.

The following stipulation was offered by the parties and is hereby accepted:

1. The Opinion of May 29, 2007 has become final and is res judicata on all issues raised and addressed therein.

By agreement of the parties, the issue to be litigated and resolved at the present time was limited to the following:

1. The claimant's entitlement to the additional medical services recommended by Dr. Raben, specifically surgery to remove hardware from a prior surgery.

In regard to this issue, the claimant contends:

"Claimant was injured on January 24, 2006. His lower back was injured when he fell out of a window on to concrete."

In regard to this issue, the respondents contend:

"Respondents have not yet accepted liability for the additional surgery recommended by Dr. Raben."

DISCUSSION

_____The sole issue presented for resolution, at the present time, is the claimant's entitlement to additional medical services, as recommended by Dr. Cyril Raben. Dr. Raben is an orthopaedic surgeon and the claimant's current treating physician. The recommended medical treatment takes the form of an additional surgery to remove the previously implanted hardware and to refuse the L4-L5, and S1 vertebra. The burden rests upon the claimant to prove that these recommended medical services represent "reasonably necessary medical services" for his compensable lumbar injury of January 24, 2006.

It is clearly the expert opinion of Dr. Cyril Raben, an orthopaedic surgeon and the claimant's current treating physician, that the claimant requires additional surgery for his compensable lumbar injury. This surgery would be in the form of a "redo" of the previous lumbar fusion of the L4 through S1 vertebra that was performed by Dr. James Blankenship, on March 28, 2006. Dr. Raben

concludes that two of the pedicle screws, which were used in the March 15, 2006 surgery are not in proper position, extend beyond the actual bone of the vertebral body, are penetrating adjacent muscle tissue, and could possibly penetrate or damage adjacent major blood vessels. Dr. Raben also concludes that the prior fusion of the vertebrae was not successful and that a pseudoarthrosis has formed between the L4 and L5 vertebra. Dr. Raben bases his opinion on the claimant's subjective complaints, his clinical examinations of the claimant, and various test results. These tests include x-rays, a bone scan, a myelogram, and an enhanced CT scan.

On the other hand, Dr. Blankenship, a neurosurgeon and the claimant's previous treating physician, expresses the expert medical opinion that the claimant needs no further surgical intervention. He disagrees with Dr. Raben's conclusions that the pedicle screws are outside of the vertebral body, that they are doing any damage to adjacent muscles, or that they pose any threat to blood vessels in that area. He also disagrees with Dr. Raben's conclusion that the fusion is incomplete or that it has formed a pseudoarthrosis at the L4-5 level. In reaching his conclusions, Dr. Blankenship has relied on the same battery of tests considered by Dr. Raben (i.e. the plain x-rays, bone scan, myelogram, and accompanying enhanced CT scan). Dr. Blankenship does concede that some of the pedicle screws are "less than optimally placed". However, it is still his opinion that the prior fusion has resulted in a solid stabilization of the affected vertebrae.

Both Dr. Raben and Dr. Blankenship are competent physicians with particular expertise in the area of medicine associated with spinal injuries and conditions. However, it is clear that they have reached totally opposite opinions on the necessity of further surgical treatment. They have reached these contradictory conclusions based upon differing interpretations of the same testing (i.e. the plain x-rays, bone scan, myelogram, and enhanced CT scan).

Based upon their credentials and expertise, both the opinions of Dr. Raben and Dr. Blankenship are entitled to significant weight and credit. It is extremely difficult, if not impossible, to afford either one the greater weight. An opinion by a third expert is appropriate to adequately protect the interests of all parties concerned. After consideration of all the evidence presented, it is my finding that the claimant should be evaluated by yet another medical specialist. This time one of the Commission's choosing. Further, an opinion should be obtained from this specialist concerning the reasonableness and appropriateness of further surgical intervention.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On January 24, 2006, the relationship of employee-employer-carrier existed between the parties.
3. On January 24, 2006, the claimant sustained a compensable injury to his lumbar spine. This compensable injury necessitated

surgical intervention, in the form of a lumbar fusion with the use of fixation devices of the L4 through S1 vertebra.

4. In order to protect the interests of all parties concerned, and to reasonably insure an accurate decision on the current issue of the claimant's entitlement to additional surgery, a third expert opinion should be obtained on the reasonableness and necessity of further surgical intervention. Such an evaluation and any testing it may require would itself constitute reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Thus, the expense of this evaluation would be the liability of the respondents herein subject to the Commission's medical fee schedule.

5. This evaluation should be performed by a neurosurgeon or orthopaedic surgeon with particular expertise in the treatment of spinal injuries and conditions. Dr. Luke Knox, a neurosurgeon, would be an appropriate physician to perform this evaluation.

ORDER

The claimant is hereby directed to undergo, at the respondents' expense, an evaluation by Dr. Luke Knox, a neurosurgeon in the northwest Arkansas area. The parties may submit to Dr. Knox any and all reports and records that they wish him to consider in reaching his opinion on the reasonableness and necessity of further surgical intervention for the claimant's lumbar difficulties. Dr. Knox was also authorized to perform any additional testing that would benefit him in reaching his opinion on the reasonableness and necessity of additional surgical

intervention. Such testing would also be at the expense of the respondents.

The respondents are further directed to obtain from Dr. Knox a report setting forth his findings and his expert medical opinion on the reasonableness and necessity of further surgical intervention for the claimant's lumbar difficulties at this time. Both parties will be allowed the right of cross examination and the opportunity to present any rebuttal evidence in regard to the opinions that may be expressed by Dr. Knox.

A ruling on whether the additional surgery recommended by Dr. Raben represents reasonably necessary medical services, under Ark. Code Ann. §11-9-508, is reserved for future determination upon receipt of the report from Dr. Knox and any additional evidence that may be relevant in regard to this report.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE